



Agenda Date: 10/4/2005
Agenda Placement: 9A

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Silva Darbinian for Robert Westmeyer - County Counsel
County Counsel
REPORT BY: Brandi Periera, Paralegal , 251-1090
SUBJECT: Adoption of a Resolution ordering an election that will enable the voters of Napa County to approve or reject the "Fair Payment for Public Benefit Act" initiative.

RECOMMENDATION

County Counsel requests consideration and adoption of a resolution ordering an election and consolidating it with the June 6, 2006 statewide primary election for the purpose of enabling the voters of Napa County to approve or reject the "Fair Payment for Public Benefit Act" initiative.

(CONTINUED FROM SEPTEMBER 27, 2005)

EXECUTIVE SUMMARY

On or about August 4, 2005 the Registrar of Voters determined that the "Fair Payment for Public Benefit Act" initiative had been signed by the requisite number of voters. On August 9, 2005 the Registrar of Voters advised the Board of Supervisors of his determination and on that same date the Board ordered the preparation of a report pursuant to Elections Code section 9111.

On September 6, 2005, at a special meeting of the Board, the Board of Supervisors accepted the report and determined that the most appropriate manner in which to proceed would be to submit the initiative ordinance, without alteration, to the voters. Staff was directed to return to the Board on September 27, 2005 with a Resolution that would order an election for the purpose of enabling the voters to approve or reject the "Fair Payment for Public Benefit Act" initiative on June 6, 2006.

At the September 27, 2005 meeting, the Registrar of Voter informed the Board that the procedure for sending sample ballots to absentee voters in the June 2006 election might change. Since then, the Registrar of Voters has decided he will not change the procedure for the June 2006 election. Therefore, the portion of the Resolution regarding the printing of the initiative in the sample ballot has not been revised.

The Resolution ordering the election contains the language that will actually appear on the ballot card the voters will review and mark "yes" or "no". At the September 27, 2005 hearing it was suggested that the ballot language should be changed to a limited extent. As a result, the Board directed staff to draft alternative language. One of the

requests was to include language that property owners have the right to seek compensation in court if the Board does not "settle" with the property owner. A second request was to include the words "fair", "reasonable" and "prompt" in the ballot language and replace the word "County" with the phrase "Board of Supervisors".

These two requests have resulted in alternative ballot questions being prepared. The ballot questions, along with their word count, are set forth in full in the Background portion of this agenda. The original language, with the sole change being replacing the word "County" with the phrase "Board of Supervisors" can be found in the attached resolution. This ballot question contains 71 words.

Elections Code section 13119 requires the ballot question to state the "nature" of the Measure to be voted upon rather than the "operation and effect" of the Measure. The discussion of the "operation and effect" of the Measure is required to be included in the Impartial Analysis.

Staff continues to recommend the original language as being the most neutral in tone and content among the three alternatives. The reasons for this recommendation are outlined in the "Background and Discussion" portion of this agenda. However, any one of the three alternatives meets the requirements of the Elections Code and could be selected by the Board.

The Board should select one of these three ballot questions and then adopt the attached Resolution which will result in a special election being held and consolidated with the June 6, 2006 statewide primary election.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Adoption of a Resolution ordering an election relating to an initiative that qualified for the ballot pursuant to Elections Code 9116 or 9118 is a ministerial action which is exempt from CEQA (14 CCR 15268; Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165).

BACKGROUND AND DISCUSSION

On or about August 4, 2005 the Registrar of Voters determined that the "Fair Payment for Public Benefit Act" initiative had been signed by the requisite number of voters. On August 9, 2005 the Registrar of Voters advised the Board of Supervisors of his determination and on that same date the Board ordered the preparation of a report pursuant to Elections Code section 9111.

On September 6, 2005, at a special meeting of the Board, the Board of Supervisors accepted the report. Following acceptance of the report the Board was required to do one of the following:

- (a) Adopt the initiative ordinance, without alteration, not later than September 16, 2005; or
- (b) Submit the initiative ordinance, without alteration, to the voters pursuant to subdivision (b) of Section 1405 (i.e. at the next statewide election occurring not less than 88 days from September 6, 2005).

The Board determined that the most appropriate manner in which to proceed would be to submit the initiative ordinance, without alteration, to the voters. Staff was directed to return to the Board on September 27, 2005 with a Resolution that would order an election for the purpose of enabling the voters to approve or reject the "Fair Payment for Public Benefit Act" initiative on June 6, 2006.

At the September 27, 2005 meeting, the Registrar of Voter informed the Board that the procedure for sending sample ballots to absentee voters in the June 2006 election might change. Since then, the Registrar of Voters has decided he will not change the procedure for the June 2006 election. Therefore, the portion of the Resolution regarding the printing of the initiative in the sample ballot has not been revised.

The Resolution ordering the election contains the language that will actually appear on the ballot card the voters will review and mark "yes" or "no". At the September 27, 2005 hearing it was suggested that the ballot language should be changed to a limited extent. As a result, the Board directed staff to draft alternative language. One of the requests was to include language that property owners have the right to seek compensation in court if the Board does not "settle" with the property owner. A second request was to include the words "fair", "reasonable" and "prompt" in the ballot language and replace the word "County" with the phrase "Board of Supervisors". These two requests have resulted in alternative ballot questions being prepared. The ballot questions, along with their word count, are set forth in full below, at the end of this portion of the agenda. The original language, with the sole change being replacing the word "County" with the phrase "Board of Supervisors." can be found in the attached resolution. This original ballot question contains 71 words.

Elections Code section 13119 requires the ballot question to state the "nature" of the Measure to be voted upon rather than the "operation and effect" of the Measure. The discussion of the "operation and effect" of the Measure is required to be included in the Impartial Analysis.

Staff continues to recommend the original language as being most neutral in tone and content among the three alternatives. Here is our reasoning:

Alternative # 1 (Stating that a property owner may seek compensation in court if agreement cannot be reached)

Litigation is always an option if an individual or entity, in the view of a prospective plaintiff, has failed to comply with the law. Thus, adding such language seems unnecessary if the goal is to explain the "nature" of the Measure.

Alternative #2 (Adding the words "reasonable," "fair" and "prompt")

Whether being required to compensate a property owner for any diminution in the value of his or her property may seem "reasonable" or "fair" to some but "unreasonable" or "unfair" to others. Thus, for example, Mr. Justice Oliver Wendell Holmes opined in an early case to come to the United States Supreme Court "the government could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law". Presumably, Justice Holmes is one who would feel being required to pay for all diminution in the value of property is inherently unreasonable and unfair. Staff gives this example to point out that the words "unreasonable" and "unfair" seem to be less than neutral insofar as the ballot question is concerned. Additionally, as staff reads the initiative, it requires payment of the diminution in the value of property regardless of whether that payment is reasonable or fair. Stated otherwise, there is nothing in the initiative that would allow less than the entire reduction in the value of the property to be paid should the property owner wish to receive that level of compensation. Staff is less concerned with the word "prompt" which could be added to the original ballot question currently in the resolution if the Board chose to do so (word count would be 72).

While staff continues to recommend the language presently included in the Resolution as the most neutral explanation of the "nature" of the initiative, staff is also of the opinion that any one of the three alternatives meets the

requirements of the Elections Code and could be selected by the Board.

The Board should select one of these three ballot questions and then adopt the attached Resolution which will result in a special election being held and consolidated with the June 6, 2006 statewide primary election.

* * *

Alternative 1-- (73 words)

Shall Napa County Ordinance No. 05-02 be adopted? (Allows real property owners to seek compensation in court for the adoption of any new land use restriction that adversely affects property values whenever the Board of Supervisors fails to do one of the following: (1) compensate owners of real property for established decreases in property value; (2) rescind or permanently waive the restriction; or (3) agree with the property owner to a compromise solution.)

Alternative 2 --(75 words)

Shall Napa County Ordinance No. 05-02 be adopted? (Requires Napa County to do one of the following whenever the Board of Supervisors adopts a new land use restriction: (1) reasonably, fairly and promptly compensate owners of real property for any established decrease in property value resulting from the restriction; or (2) eliminate the adverse impact on property value by rescinding or permanently waiving the restriction; or (3) agree with the property owner to a compromise solution.)

Elections Code section 13247 limits the ballot question to 75 words, and section 9 of the Elections Code defines how words are to be counted.

SUPPORTING DOCUMENTS

A . Resolution Calling Election

CEO Recommendation: Approve

Reviewed By: Lorenzo Zialcita